REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

CE LUZON GEOTHERMAL POWER COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7890

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

DEC 2 2 2016 2:15 pm

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RESOLUTION

MINDARO-GRULLA, *J.*:

This resolves respondent's **Motion for Partial Reconsideration (Re: Decision dated 22 July 2016)**, filed on August 10, 2016, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration)**, filed on September 21, 2016.

Respondent Commissioner of Internal Revenue (CIR) seeks reconsideration of the Court's Decision promulgated on July 22, 2016 (assailed Decision)[1], the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of

[1] Docket, vol. III, pp. 1278-1310.

petitioner in the amount of **NINE MILLION FIVE HUNDRED FORTY-FOUR THOUSAND FOUR HUNDRED SIXTY-FIVE PESOS AND 52/100 (₱9,544,465.52)**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for the four quarters of calendar year 2007.

SO ORDERED."

Respondent prays for this Court to reconsider the assailed Decision insofar as it partially granted petitioner's claim for refund of unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales for the four quarters of calendar year 2007 in the reduced amount of ₱9,544,465.52. The following grounds are submitted for the Court's reconsideration:

a. petitioner must prove that it was able to comply with the substantiation requirement before it may be able to claim for refund; and

b. a claim for refund must be strictly construed against the claimant.

On the other hand, petitioner opposes the instant Motion and denies the allegation of failure to submit complete supporting documents. It further maintains that a claim for input VAT refund, like any other ordinary civil case, necessitates only a preponderance of evidence.

The Motion for Partial Reconsideration is bereft of merit.

The Court made a thorough examination of petitioner's relevant supporting documents, such as sales invoices[2], official receipts (ORs)[3] issued to its sole customer, Philippine National Oil Corporation – Energy Development Corporation (PNOC-EDC), various suppliers' invoices, ORs, Import Entry & Internal Revenue Declarations (IEIRD), Bureau of Customs ORs and BIR Form 1600[4] in support of its claimed unutilized input taxes; and was convinced that petitioner was able to

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[2] Exhibits "R-2.1" to "R-2.8".
[3] Exhibits "R-4.1" to "R-4.27".
[4] Exhibits "R-6-L-1Q.00001" to "R-6-L-1Q.01026"; "R-6-L-2Q.00001" to "R-6-L-2Q.00838"; "R-6-L-3Q.00001" to "R-6-L-3Q.00447"; "R-6-L-4Q.00001" to "R-6-L-4Q.00089"; "V", "W".

prove its entitlement to the claim for refund or issuance of tax credit certificate representing its unutilized input VAT for the four quarters of calendar year 2007, *but in the reduced amount of ₱9,544,465.52.* As regards this amount, petitioner complied with the invoicing requirements set forth under the law and regulations applicable to the instant case, *i.e.*, Sections 110(A), 113(A) and (B), and 237 of the NIRC of 1997, as amended, and in relation to Sections 4.110-1, 4.110-2, 4.110-8 and 4.113-1 of Revenue Regulations No. 16-2005, as amended.

As a result of the examination of petitioner's supporting documents, the Court ordered the refund of a portion which complied with the substantiation requirements while the non-compliant portion was denied. Contrary to respondent's allegations of petitioner's non-compliance with the substantiation requirements, the Court found that out of the total claimed input VAT of ₱10,895,847.59, only a portion amounting to ₱1,351,382.07 was invalid for lack of proper substantiation.[5]

Considering that respondent's allegations lack sufficient basis, they being mere general averments, and considering further that no additional disallowances were found, the Court will not disturb its previous findings absent any compelling evidence to the contrary.

Meanwhile, respondent insists that petitioner miserably failed to comply with the submission of the complete documentary requirements enumerated in Revenue Memorandum Order (RMO) No. 53-98, thus, there is no basis to sustain petitioner's claim for refund.

This argument, however, is bereft of merit.

The Supreme Court made it clear in the recent case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[6] that a taxpayer's failure to submit all the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level.

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[5] Docket, vol. III, p. 1308.
[6] G.R. No. 207112, December 8, 2015.

"Anent RMO No. 53-98, the CTA Division found that the said order provided a checklist of documents for the BIR to consider in granting claims for refund, and served as a guide for the courts in determining whether the taxpayer had submitted complete supporting documents.

This should also be corrected.

To quote RMO No. 53-98:

REVENUE MEMORANDUM ORDER NO. 53-98

SUBJECT: Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

TO: All Internal Revenue Officers, Employees and Others Concerned

I. *BACKGROUND*

It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.

For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.

II. *OBJECTIVE*

This order is issued to:

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a. Identify the documents to be required from a taxpayer during audit, according to particular kind of tax; and

b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.

III. *LIST OF REQUIREMENTS PER TAX TYPE*

Income Tax/Withholding Tax

— Annex A (3 pages)

Value Added Tax

— Annex B (2 pages)

— Annex B-1 (5 pages)

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As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present *upon audit of their tax liabilities*. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are *actually* complete to support a claim for tax credit or refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*:

> The CIR's reliance on RMO 53-98 is misplaced. <u>There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT</u>. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a

judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court."

As regards respondent's second argument, We agree that "tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit".[7] "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[8] However, once the taxpayer was able to sufficiently prove its entitlement to a refund, it thus behooves the government to refund what the taxpayer is entitled to. "In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness."[9]

As ruled in the assailed Decision, petitioner sufficiently established its claim for tax refund/credit but only in the reduced amount of ₱9,544,465.52, representing its unutilized input VAT for the four quarters of calendar year 2007.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the assailed Decision promulgated on July 22, 2016, respondent's **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[7] *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now TeaM Energy Corporation),* G.R. No. 180434, January 20, 2016.

[8] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 206526, January 28, 2015.

[9] *Filinvest Development Corporation vs. Commissioner of Internal Revenue,* G.R., 146941, August 9, 2007.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice